Omni Innovations LLC et al v. Inviva Inc et al Doc. 20

Douglas E. McKinley, Jr.
PO Box 202
Richland WA, 99352
(509) 628-0809

i.Justice Law, P.C.
Robert J. Siegel
1325 Fourth Ave., Suite 940
Seattle, WA 98101
(206) 304-5400

THE HON. JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a Washington Limited Liability company; and JAMES S. GORDON, JR., a married individual, **Plaintiffs,** v. **INVIVA, INC., a Kentucky and Delaware corporation, d/b/a American Life Direct, and American Life Insurance Co. of New York; and JOHN DOES, I-X,,** **Defendants,**	**NO.** CV6-1350 JCC **DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT FOR INJUNCTIVE RELIEF**

1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age of 18, of sound mind, and am otherwise competent to testify.

i.Justice Law, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-304-5400
Fax: 206-624-0717

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2. I am owner of the domain name Gordonworks.com, which I registered on or about May 1998.

3. I have been plagued by spam for well over eight years. Over time, my spam problem has grown more and more severe, and has now spiraled out of control, consuming more and more of my time and resources. From late 1998 to late 2003, I fought spam by deleting, complaining, reporting, and filtering spam. My first lawsuit against a spammer was filed a full five years after the inception of this persistent spam problem, i.e. December 2003. And to this point all my efforts to curtail the onslaught of spam have all failed. I have been substantially adversely impacted by the continued onslaught of spam. **Exhibit "A"** is a true and correct copy of a letter to my congressman concerning my first major battle with a spammer in 1999.

4. Despite numerous requests and demands to cease and desist, Defendants continue to send unlawful spam to me! Defendants have continued to send spam to me up until June 14, 2007, and throughout the pendency of this litigation. (See copies of most recent spam from Defendants, attached hereto as **Exhibit "B".)**

5. Beginning on or about February 15, 2004, I configured the email server hosting my 'gordonworks.com' domain to provide an automated response a/k/a "Auto-responder" to any and all commercial electronic mail. Copies of the automated response messages are attached hereto as **Exhibit "C".** By this means, I have personally, on behalf of 'gordonworks.com', sent approximately 430 direct email requests to defendant and/or defendant's agents to stop the transmission of all email to me.

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6. Additionally, I have sent or caused to be sent on my behalf close to one million auto-responder cease and desist messages to spammers during the period of February 2004 to May 2006. Of that number, I have retained about 320,000 messages, which bounced back from spammers who supplied bogus return email addresses in their emails or who had their services terminated/disabled. Approximately 150 of those bounced messages came from this defendant. **Exhibit "D"** is a true and correct copy of one of defendant's bounced messages.

Facts Related to My Attempts to Stop Spam Generally and Adverse Impacts from Spam

7. I have made the following efforts to stop spam generally, including spam received from Defendants, and have suffered the following adverse impacts and damages as a result of the spam received from Defendants and others.

7.1 In January and February 2005, I purchased a new business computer along with a second business computer to help with the increased load of spam. In May 2005, my monthly service fee increased from approximately $40/month to about $65/month. In November 2006, this fee increased to about $180/month – in Feb 2007 to $220/month. All to handle the increased burden of managing spam.

7.2 I was forced to add "staff" by way of engaging the Assisted Server Support team at Godaddy for a monthly fee of $99. The alternative is to pay $75/hour for independent IT services.

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Seattle, WA 98101
Phone: 206-304-5400
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7.3 It has been necessary to purchase numerous forensic tools, anti-virus tools, anti-spyware tools, and spam filtering tools over the last four years. I have spent approximately $2000.00 on these tools and services.

7.4 The large volume of spam received caused a displacement of over 25 Gigabytes of hard disk storage space on two computers.

7.5 I lost the use of my laptop as its hard drive was "overrun" with spam necessitating the purchases of the two computers in 6.1, above.

7.6 On a personal level, time dealing with spam is time away from my family.

7.7 I have suffered a significant loss of time spent on more productive pursuits, such as my Ph.D. program which was initially a three year program. After years of dealing with the spam problem, I will finish in a little more than five years. Product development efforts in my business have also been hampered, and slowed significantly.

7.8 I have suffered a loss of control of my intellectual/personal property, (domains) to spammers, and a loss of privacy and loss of peace of mind to enjoy my domain and the unfettered use of the internet.

7.9 I have been "joe-jobbed" by spammers whereby spammers subvert my domains by "stealing" my identity, which makes it appear that my domains are sending spam. As a result of this subterfuge, my domains are being blocked from sending legitimate email communications (non-commercial).

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7.10 I have been subjected to dictionary attacks wherein a spammer uses automated means to guess at possible names and sends spam to these newly created names at gordonworks.com, thereby again increasing the volume of spam received and resulting consequences.

7.11 Spammers have sold my personal profile for profit to other spammers. Apparently, the buying and selling of personal profiles is a prime means of remuneration for online marketers. Each email address one owns must be de-listed from the hundreds or thousands of "host names" owned and controlled by each spammer. And once this is accomplished, spammers and their affiliates create new host names to spam from – making successful de-listing virtually impossible. Global de-listing is not available from the majority of spammers and from spammer domains not yet created.

7.12 I receive 20-100 viruses/malware emails each week. This number has been as high as 500-600 per week. This has resulted in four server crashes that necessitated the purchases of new hard drives or computers since January 2005. These crashes resulted from malware infections of my computers. These infections have also caused the loss of business data including tax and banking files.

7.13 I have also been forced to expend considerable time and labor dealing with client spam problems presented to me by my customers, including malware removal, recovered/replaced hard drives, installed virus and adware programs, etc.

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7.14 I have been forced to change Internet Service Providers four times since 2000 as none were able to help me to effectively curb the spam.

7.15 I have sent approximately 14,000 separate and distinct complaints to my ISPs, spammers' network service providers, Richland and Kennewick Police Depts., Federal Trade Commission, Securities and Exchange Commission, Washington State Attorney General's Office, and four state and federal legislators.

7.16 I have spent time and labor writing, locating, and mailing dozens of certified cease and desist letters to spammers.

7.17 I have used the automated un-subscription program, SpamFire with SpamCrime Reporter, created by Matterform Media to unsubscribe from over one hundred thousand spammers' offers. This tool uses the methods available in the email and web site it points to to automatically opt-out of each email received. This includes any email received from defendants during the approximate time period of 2004-6.

7.18 My server has been burdened by spam which features images in the place of text - text is easier to filter. Image spam is necessarily 30-50 times larger than text messages, which are the norm of email communications, which significantly increases the use of bandwidth and usurps hard-drive capacity.

7.19 The time I am forced to spend is 90-120 minutes per day – 365 days per year downloading and filtering spam.

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7.20 I have postponed adding 110 new interested customers to my server, because spamming is out-of-control. The fee paid to me would cover the base cost of Omni's server, but the added work due to spam makes this endeavor too costly.

7.21 I have had to increase my bandwidth capacity from less than 10GB/month to 500GB/month in the past 2 years.

7.22 All of the 200+ reciprocal links I hosted on my web sites between 1996-2003 have been lost due to lack of maintenance of my web site resulting from the above-described burden of dealing with the spam problem.

Facts Specifically Related to Defendants.

8. **Exhibit "E"** is the return receipt from a letter that I sent to defendant in 2005, which requested that it stop sending me email.

9. **Exhibit "F"** is a true and correct copy of the cease and desist letter that I sent to defendant via US Mail dated May 25, 2005.

10. Attached hereto as **Exhibit "G"** are copies of regulatory complaint(s) that I filed against Inviva, which does business as American Life Direct, Spectrum Direct, Lifeshopdirect, Liberty Direct, and other entities.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 14th day of June, 2007
/s/ James S. Gordon, Jr.
James S. Gordon, Jr.

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1325 Fourth Ave., Suite 940
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Fax: 206-624-0717

Certificate of Service

I, hereby, certify that on June 14, 2007, I filed this affidavit with this Court via approved electronic filing, and served the following:
Attorneys for Defendants: Newman & Newman, Roger Townsend, Derek Newman

/s/ Robert J. Siegel____
Robert J. Siegel

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